REMARKS

Priority:

The Examiner contends that Applicants are entitled to claim priority only to U.S. Patent No. 5,856,249, which has an effective filing date of January 6, 1998. Applicants acknowledge the Examiner's decision.

Double Patenting Rejections:

Applicants again confirm willingness to file a Terminal Disclaimer once all other issues of patentability are resolved.

35 USC Section 103 Rejections:

Claims 15-21 were rejected as being unpatentable under 35 USC 103(a) over Gretzinger et al. in view of Stumpf et al. (6,035,901). Claims 15-21 were also rejected as being unpatentable under 35 USC 103(a) over Stumpf et al. in view of Gretzinger et al. Applicants have responded to both rejections with the single discussion below.

Applicants respectfully submit that this rejection fails to establish a prima facie showing of obviousness, since the combination of references fails to disclose expressly claimed elements or limitations of Applicants' invention. See *In re Fine,* 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

First, the combination of references fails to disclose the incorporation of a UV stabilizer dispersed in the yarns running perpendicular to the elastomeric monofilament yarns (i.e., the warp yarns), as expressly claimed by Applicants. The Examiner contends it would have been an obvious variation of Gretzinger et al. to include UV stabilizers in the warp yarns to create the

claimed limitation (Paper 19, pp. 5-6). Nonetheless, Gretzinger et al. fail to explicitly disclose this limitation. Additionally, if Gretzinger et al. recognize that UV degradation can be a problem and suggest UV stabilizers for incorporation into elastomeric monofilaments (i.e., the fill yarns), then one might expect that Gretzinger et al. would also suggest UV stabilizers in the warp yarns. However, Gretzinger et al. failed to suggest UV stabilizers in the warp yarns. Thus, Gretzinger et al. failed to recognize the benefit of actually incorporating UV stabilizers in the warp yarns, as expressly claimed by Applicants, and as a result, could not possibly teach this limitation.

Furthermore, Stumpf et al. fail to overcome this deficiency of Gretzinger et al. since Stumpf et al. fail to disclose the use of any UV stabilizer in either the warp or the fill yarns. Thus, Applicants respectfully contend that the references fail to disclose the incorporation of a UV stabilizer dispersed in the warp yarns, as expressly claimed by Applicants in independent claim 15, and request that this rejection, Gretzinger et al. in view of Stumpf et al. and Stumpf et al. in view of Gretzinger et al., be withdrawn.

Second, the combination of references fails to disclose the incorporation of elastomer in the yarns running perpendicular to the elastomeric monofilament yarns (i.e., the warp yarns). The Examiner contends that Gretzinger et al. disclose that minor amounts of elastomer can be added to the warp yarns to create the claimed limitation (Paper 19, p. 5). Applicants respectfully submit that the brief disclosure by Gretzinger et al. that minor amounts of elastomer can be added to the warp yarns (col. 11, lines 1-5) is not sufficient to teach one skilled in the art what is meant by the phrase "minor amounts." Applicants contend that this brief disclosure by Gretzinger et al. would require undue experimentation in order to determine the definition of "minor amounts." Additionally, Gretzinger et al. repeatedly contend that these warp yarns are "non-elastomeric" (col. 2, lines 20-29; col. 14, lines 35-59).

Furthermore, Stumpf et al. fail to overcome this deficiency of Gretzinger et al. Thus, Applicants respectfully contend that the references fail to disclose the incorporation of elastomer in the warp yarns, as expressly claimed by Applicants in independent claim 15, and request that this rejection, Gretzinger et al. in view of Stumpf et al. and Stumpf et al. in view of Gretzinger et al., be withdrawn.

Third, Applicants respectfully submit that the combination of references fails to disclose using a textured yarn mixed with elastomeric filaments as the yarn running perpendicular to the elastomeric monofilaments (i.e., the fill yarns), as expressly claimed by Applicants. The Examiner contends it would have been an obvious variation of the combined references to substitute the textured yarns of Stumpf et al. for the warp yarns of Gretzinger et al. to create the claimed invention (Paper 19, p. 5). Nonetheless, Gretzinger et al. fail to explicitly disclose this limitation and specifically, fail to disclose the use of any textured yarns in the warp or fill direction.

Furthermore, Stumpf et al. fail to overcome this deficiency of Gretzinger et al. since Stumpf et al. fail to disclose a textured yarn mixed with elastomeric filaments as the fill yarn. Thus, Applicants respectfully contend that the references fail to disclose using a textured yarn mixed with elastomeric filaments in the fill yarns, as expressly claimed by Applicants in independent claim 15, and request that this rejection, Gretzinger et al. in view of Stumpf et al. and Stumpf et al. in view of Gretzinger et al., be withdrawn.

Therefore, since the combination of references fails to disclose expressly claimed elements or limitations of Applicants' invention, Applicants respectfully submit that a prima facie showing of obviousness has not been established. Accordingly, Applicants respectfully submit that this rejection is improper and respectfully request that the rejection of claims 15-21, based

on Gretzinger et al. in view of Stumpf et al. and Stumpf et al. in view of Gretzinger et al., be withdrawn.

Claims 15-21 were rejected as being unpatentable under 35 USC 103(a) over McLarty, III (5,855,991) in view of Gretzinger et al. The Examiner contends that it would have been obvious to one of ordinary skill in the art to add UV stabilizers to the elastomeric components in both sets of yarns in the woven fabric taught by McLarty, III in '991 to increase the life of the fabric by increasing the fabric's resistance to UV degradation. The Examiner also submits that one of ordinary skill in the art would be motivated to choose the barathea weave pattern which will be comfortable to the user by placing the softer yarns (i.e. the multi-filament yarns) on the surface of the fabric while providing equally distributed support to the user (Paper 19, p.9).

Citing 35 USC Section 103(c), Applicants respectfully submit that the McLarty, III reference is improperly used in forming the basis for this rejection. 35 USC Section 103(c) states:

> "Patentability shall not be negatived by the manner in which the invention was made. Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person."

The McLarty, III reference (the '991 patent) is assigned to Milliken Research Corporation. The current pending application is a continuation of US Pat. No. 5,856,249 (the '249 patent). The '249 patent was assigned to Milliken Research Corporation and duly recorded

at the Patent Office. Thus, the current pending application, being a continuation of the '249 patent, is also assigned to Milliken Research Corporation. See MPEP Section 306.

Attached herewith, please find (a) a true copy of the assignment document for the '249 patent, (b) a copy of the Notice of Recordation of Assignment Document for the '249 patent (showing that the assignment was duly recorded by the USPTO), and (c) a copy of the front page of the '249 patent. Thus, Applicants believe these documents provide adequate evidence that the McLarty, III reference (the '991 patent) and the pending patent application are commonly assigned.

Furthermore, Applicant believes the McLarty, III reference qualifies as prior art under 35 USC Section 102(e). The relevant portion of 35 USC Section 102(e) states:

> "The invention was described in a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, ..."

Accordingly, since the pending patent application and the McLarty, III reference are commonly assigned, Applicants respectfully submit that the rejection over McLarty, III is improper and respectfully requests that the rejection over McLarty, III in view of Gretzinger et al. be withdrawn.

In view of the above remarks, reconsideration of pending claims 15-21 is earnestly solicited.

Respectfully requested,

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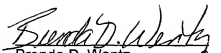

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